

# **FAMILY COURT MATTER**

## **RESPONSE TO REQUEST TO ESTABLISH CHILD CUSTODY AND PARENTING TIME**

### **Forms included in this packet:**

*Responsive Notice of Motion and Motion to Establish Child Custody and Parenting Time*

*Affidavit in Support of Motion*

*Affidavit of Service*

***SEE ALSO “PARENTAL GUIDE TO MAKING CHILD-FOCUSED  
PARENTING TIME DECISIONS”***

## IMPORTANT NOTICES

- You **CANNOT** use these forms if there is already a Court Order awarding custody.
- If your child is the subject of a child in need of protection or services (CHIPS) proceeding or certain delinquency proceedings, the Court may be not able to immediately decide your request to establish custody.
- Court personnel and the county attorney's office **CANNOT** help you fill out the form(s) in this packet.
- You should see a lawyer if you do not know how to answer the questions on these forms or if you think the other party will hire a lawyer.
- The Court expects every person who appears in court without a lawyer to know and follow the law. If you act as your own lawyer, you must do what a lawyer would do.
- You **MUST** fill out all three forms included with this packet and you **MUST** follow the instructions included with this packet.
- Type your answers or print neatly using dark ink.
- If you need more space to answer a question use an additional full sheet of paper.

# INSTRUCTIONS

## Step 1

### Fill Out the *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* Form

Fill out the *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* form included in this packet. This form tells the Court and the other party your response to the other party's *Motion to Establish Custody and Parenting Time* of the child(ren), and the date and time of the hearing.

## FILL IN THE TOP PART OF THE FORM

- On the line after "In Re the Custody of," print the name and birth date of each child involved in this action.
- Write in the case or court file number. This number is on the other party's *Notice of Motion and Motion*.
- On the line marked "Petitioner/Plaintiff," print the other party's name.
- On the line marked "Respondent/Defendant," print the name of the Respondent the same as on the other party's *Notice of Motion and Motion*.
- On the "TO" line, print the full name and street address of the Petitioner.

### FILL OUT THE REST OF THE FORM:

**NOTE:** The following instructions are numbered the same as the paragraphs/questions on the *Responsive Notice of Motion and Motion* form.

1. Print the full name and date of birth of each child for whom the other party wishes to establish custody and parenting time. This is on paragraph 1 of the other party's *Notice of Motion and Motion to Establish Custody and Parenting Time*.
2. State how you and the child(ren) are related; e.g. mother.
3. **Legal custody** identifies which party will have a right to make decisions about important issues in the life of the child(ren), including the educational, religious, and medical upbringing of the child(ren). Check off the type of legal custody you would like the Court to order:
  - a. "Joint legal custody" – both you and the other party will have an equal right to make decisions regarding the educational, religious, and medical upbringing of the child(ren).
  - b. "Sole legal custody" – only one party will have the right to make decisions regarding the educational, religious, and medical upbringing of the child(ren).

4. **Physical custody** identifies which party the child(ren) will live with. A parent who does not have physical custody usually has a right to parenting time with the child(ren). Check off which type of physical custody you would like the Court to order:
  - a. “Joint physical custody” – the child(ren) will live with both you and the other party based on a scheduled that meets the needs of the child. You will write in your proposed schedule at Paragraph 6.
  - b. “Sole physical custody” – the child(ren) will live with one party and will have parenting time with the other party. You will write the parenting time schedule at Paragraph 6.
5. **Supervised or Unsupervised Parenting Time:** The term “visitation” was changed to “parenting time” by the Minnesota Legislature, effective January 1, 2001. “Parenting time” means the time a parent spends with a child regardless of the custodial designation regarding the child. Check off whether parenting time with the child(ren) should be supervised or unsupervised. **NOTE:** Supervised parenting time is not likely to be ordered unless unsupervised visits will cause harm to the child(ren).
6. **Parenting Time Schedule:** Use this paragraph to explain when each parent will have parenting time with the child(ren), whether you are asking for joint custody or sole custody. If you will have sole custody, check the box “Other parent” and state specifically when the other parent will have time with the child(ren.) If you will have joint custody, check both boxes “Me” and “Other parent” and explain which parent has responsibility for the child(ren) at all times.

The parenting time schedule you request must be what is **best for the child(ren)**. This will depend upon the age of the child(ren) and the parents’ schedules. Read the pamphlet “A Parental Guide to Making Child-Focused Parenting Time Decisions” which is available at the court administrator’s office. Child development experts wrote this pamphlet to help parents and judges understand the needs of children and how those needs change as a child gets older. In setting out a schedule, you should be very specific. For example: “*Weekends – every other weekend from Friday at 5:00 p.m. to Sunday at 5:00 p.m.*” “*Weeknights – one weeknight per week from after school to 7:00 p.m.*” Include in your schedule such matters as who should provide transportation, and where exchanges should take place. Holidays may include, but are not limited to, the following: New Years Day, Easter, Memorial Day weekend, Fourth of July, Labor Day weekend, Thanksgiving Day, and Christmas. Some parents alternate holidays each year so that, for example, on Memorial Day weekend the child(ren) would be with the mother in odd-numbered years and with the father in even-numbered years. The next holiday would be Fourth of July and the child(ren) would be with the father in odd-numbered years and with the mother in even-numbered years. Other parents keep the same holidays each year so that, for example, the child(ren) spends every Christmas Eve with the mother and every Christmas Day with the father. Under “Other” you may want to include how you would like to handle Mother’s Day, Father’s Day, and any other special days.

7. **Child support** is money paid by the noncustodial parent to the custodial party for the support of the child(ren). Check off how you would like the Court to decide the issue of child support.
  - (a) Check box (a) if the child(ren) will live with you and you want the other party to pay you a monthly child support amount, and then fill in the amount that should be paid.
  - (b) Check box (b) if you will be paying child support to the other party.
  - (c) Check box (c) if there is currently a court order regarding child support.

To calculate the amount of child support, follow these steps:

- First, if you want the other party to pay child support, determine that party's total gross monthly income. Gross income is income before taxes and other deductions. If you will be paying child support to the other party, determine your total gross monthly income. If you are paid weekly, take your weekly gross income and multiply by 4.33 to get monthly gross income. If you are paid every 2 weeks, multiply your gross income for the 2-week period by 2.17 to get monthly gross income.
- Next, determine the net income for the person who will be paying child support. To determine net income, subtract the following from the person's gross monthly income:
  - (1) Federal Income Tax (standard deductions apply – use tax tables)
  - (2) State Income Tax (standard deductions apply – use tax tables)
  - (3) Social Security deductions
  - (4) Reasonable pension deductions
  - (5) Cost of dependent health insurance coverage
  - (6) Cost of individual or group health/hospitalization coverage or an amount for actual medical expenses
  - (7) A child support or maintenance order that is currently being paid.

Using the NET income amount and the chart below, determine the percent of child support to be paid. The following are two examples of how to find the percentage:

- Example 1: Assume the person's net income is \$857 per month and there are 3 children of the marriage. In the left-hand column, find the range in which \$857 is located (\$851-900). In the top row, find the number of children to be supported (3). The point at which the column and row meet is the percentage of child support to be paid: (29%).
- Example 1: Assume the person's net income is \$1,250 per month and there are 2 children of the marriage. In the left-hand column, find the range in which \$1,250 is located (\$1001-5000). In the top row, find the number of children to be supported (2). The point at which the column and row meet is the percentage of child support to be paid: (30%).

Net Income

Number of Children

**Per Month      1      2      3      4      5      6      7 or more**

\$0-\$550: To be determined based on the person's ability to provide support at this income level, or at a higher level if the person has the earning ability.

\$551-600	16%	19%	22%	25%	28%	30%	32%
\$601-650	17%	21%	24%	27%	29%	32%	34%
\$651-700	18%	22%	25%	28%	31%	34%	36%
\$701-750	19%	23%	27%	30%	33%	36%	38%
\$751-800	20%	24%	28%	31%	35%	38%	40%
\$801-850	21%	25%	29%	33%	36%	40%	42%
\$851-900	22%	27%	31%	34%	38%	41%	44%
\$901-950	23%	28%	32%	36%	40%	43%	46%
\$951-1000	24%	29%	34%	38%	41%	45%	48%
\$1001-5935	25%	30%	35%	39%	43%	47%	50%

- Now calculate the dollar amount of support to be paid each month by multiplying the person's net income by the percentage indicated in the chart. For example: using the first example above, multiply  $\$857.00 \times 29\% = \$248.53$  per month. Using the second example from above, multiply  $\$1,250.00 \times 30\% = \$375.00$  per month.

**Fill in the child support amount on the form.**

8. You do not need to write anything for this question.
9. You do not need to write anything for this question.
10. You do not need to write anything for this question.
11. If you are asking for additional relief, write in the relief you are requesting.
12. You don't have to write anything for this question, but you should read and understand it.

**Read the Verification and Acknowledgment carefully. By signing your name you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court can order you to pay money to the other party or impose other sanctions.**

**Date and Sign the *Responsive Notice of Motion and Motion Form*.**

## Step 2

### Fill Out the

#### *Affidavit in Response to Motion to Establish Custody and Parenting Time Form*

Fill out the *Affidavit in Response to Motion to Establish Custody and Parenting Time* form included in this packet. This form tells the Court and the other party what you are asking for from the Court and WHY you are asking for it.

- Fill in the top part of the form the same way you did on your *Responsive Notice of Motion and Motion* form in Step 1.
- Where the form reads “STATE OF MINNESOTA, COUNTY OF \_\_\_\_\_,” on the blank line after “COUNTY OF,” fill in the name of the county where you will sign the *Affidavit*.
- Write your name on the blank line above paragraph/question number 1.

**NOTE: The following instructions are numbered the same as the questions on the Affidavit in Response to Motion to Establish Custody and Parenting Time.**

1. Write in your full name after “Respondent.”
2. Check off whether a juvenile court proceeding is or is not now taking place in Minnesota or in any other state. If it is, list the county, state and file number of the case. If you have any juvenile court orders or papers from the child protection worker, attach a copy of these to your *Affidavit*.
3. Check off whether an *Order for Protection* involving you and the other party or child(ren) is now in effect in Minnesota or in any other state. If it is, write in the county, state and file number, and attach a copy of the *Order for Protection*.
4. Check off whether the child(ren) currently live(s) with you or the Petitioner or the other Respondent. Write the other Respondent’s relationship to the child(ren) and the Petitioner’s relationship to the child(ren). List the child(ren)’s current address, and the date the child(ren) moved to that address. Write in your relationship to the child(ren).
5. Check off who should have **legal** custody of the child(ren) the same as you did on your *Responsive Notice of Motion and Motion* form and write in the reasons you think this is best for the child(ren).
6. Check off who should have **physical** custody of the child(ren) the same as you did in your *Responsive Notice of Motion and Motion*. If you are asking for joint physical custody, write in the schedule you think is best for the child(ren).
7. Write in why your request is best for the child(ren). Include as many details and facts as possible for each factor listed so the Court can make a decision. The Court considers 13 factors to determine custody if there is no custody order. Include details about each of the following factors.
  - a) the wishes of each of the child(ren)’s parents as to custody;
  - b) the reasonable preference of the child, if the Court deems the child(ren) to be of sufficient age to express preference;

- c) the child(ren)'s primary caretaker;
- d) the intimacy of the relationship between parent and child(ren);
- e) the interaction and interrelationship of the child(ren) with (a) parent(s), sibling(s), and any other person(s) who may significantly affect the child(ren)'s best interests;
- f) the child(ren)'s adjustment to home, school and community;
- g) the length of time the child(ren) has/have lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- h) the permanence, as a family unity, of the existing or proposed custodial home;
- i) the mental and physical health of all individuals involved; except that a disability, as defined in Section 363.01 of a proposed custodian or the child(ren) shall not be determinative of the custody of the child(ren), unless the proposed custodial arrangement is not in the best interest(s) of the child(ren);
- j) the capacity and disposition of the parties to give the child(ren) love, affection, and guidance, and to continue educating and raising the child(ren) in the child(ren)'s culture, religion and creed, if any.
- k) The child(ren)'s cultural background;
- l) The effect on the child(ren) of the actions of an abuser, if related to domestic abuse, as defined in Section 518B.01, that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family household member of the parent; and
- m) Except in cases in which a finding of domestic abuse as defined in Section 518B.01 has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child(ren).

8. Write down your response to paragraphs 6 and 7 of the other party's *Affidavit*.
9. Write down why you want the parenting time schedule in your *Motion*. Include as many facts as possible to show the Court that your schedule is in the best interests of the child(ren). If there are limits, such as no overnights, write in why the Court should order these limits.
10. If your parenting time schedule is different from the other party's, write down your response to paragraph 8 of the other party's *Affidavit*.
11. Check off whether you are asking for supervised or unsupervised parenting time the same was as you did in paragraph 4 of your *Responsive Notice of Motion and Motion* and write down why you want the parenting time to be supervised or unsupervised. If you are asking for supervised time, be specific about the reasons you believe the other parent's parenting time should be supervised. The Court will grant parenting time that enables the child(ren) and the non-custodial parent to maintain a parent-child relationship that will be in the best interest(s) of the child(ren). If you are requesting supervised parenting time or other limits, write in the things that have happened and are likely to happen that will put the child(ren)'s physical or emotional health in danger, or will impair the child(ren)'s emotional development if the parenting time is unsupervised. Write in the name of the person or agency you would like to supervise the parenting time.



12. Write down your response to paragraph 9 of the other party's *Affidavit*.
13. Check whether you are requesting that the child(ren) be transferred at a visitation exchange center if one is located in the area and for both parties to follow all rules of the visitation exchange center. If yes, write in why this is in the child(ren)'s best interests.

**NOTE:** The visitation exchange center may require the parties to pay a fee for each exchange.

If no, write in a specific location other than a visitation exchange center for the transfer and write in the reasons for that request.

14. Write in your response to paragraph 10 of the other party's *Affidavit*.
15. State how much medical insurance costs per month for the child(ren) and check off who currently pays for that insurance.
16. State how much day care costs per month for the child(ren) and check off who currently pays for that day care.
17. Write in the other party's full name, the name of his or her employer, how much (s)he earns per week, month, year, or other (check the correct box). Write in your current gross income per month. Write in your current net monthly income and the source of that income. If you have income from more than one source, write in the additional source(s) and the amount(s) you receive from each per month.
18. Write in your current monthly expenses. Be sure to add up the column and fill in the total amount of monthly expenses. Write in the names of individuals who live with you and who are included in your household expenses.
19. Write in any additional information you think might be helpful to the Court when it considers your response and request to establish custody and parenting time of the child(ren).

**DO NOT DATE AND SIGN YOUR AFFIDAVIT UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC OR COURT ADMINISTRATOR/DEPUTY. MAKE SURE YOU BRING PICTURE IDENTIFICATION TO SHOW TO THEM.**

## Step 3

### Make Copies of Forms

1. Make **two** (2) copies of the *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* form and all attachments, and **two** (2) copies of your *Affidavit in Response to Motion to Establish Custody and Parenting Time* form and all attachments.
2. Keep one copy of each form for yourself (make sure you bring your copies with you to Court on the day of the hearing).
3. Step 4 tells you how to serve the second copy of each form upon the other party. Step 6 tells you how to file the originals of the forms with the Court.

## Step 4

### Serve Notice on the Other Party

You must arrange for the other party to receive complete copies of all documents you have prepared for the hearing. This is called "service of process." **A party to an action is not allowed to serve the other party to the action.** You must have someone else who is over the age of 18 serve the other party. The papers may be served by mail, or personally.

**To personally serve the other party, follow these instructions:**

1. The server (not you) hands the other party one copy of the completed *Responsive Notice of Motion and Motion* form, one copy of the completed *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time* and one copy of any attachments.
2. The server must give the papers to the other party **at least five (5) days before** the hearing date. Papers cannot be served on a Sunday or a legal holiday. For example, if the hearing date is January 15, the server must give the papers to the other party on or before January 10. If January 10 is a Sunday, the papers must be served on or before January 9. **Note:** if your responsive *Motion* raises **new** issues not addressed by the other party's *Notice of Motion and Motion*, your responsive papers must be served **at least ten (10) days before** hearing.

**To serve the papers by mail, follow these instructions:**

1. The server places **one copy** of the completed *Responsive Notice of Motion and Motion* form, **one copy** of the *Affidavit in Response to the Motion to Establish Custody and Parenting Time*, and all attachments in an envelope. Then the server writes your return address and the last known address of the other party on the front of the envelope. The server places the correct amount of postage on the envelope (the server may want to take the envelope to the post office to be weighed to make sure of the correct amount of postage).
2. The server must mail the envelope containing the forms to the other party either:

- a. At least 8 days before the hearing if the papers only respond to issues raised in the Notice of Motion and Motion. For example, if the hearing is January 18, the papers must be postmarked on or before January 10; **OR**
- b. At least 13 days before the hearing if the papers raise new issues other than those raised in the other party's Notice of Motion and Motion.

**WARNING: The Court will ignore your response if you do not serve and file the responsive papers on time. If you do not know when your papers must be served, either ask an attorney for advice, or serve the papers at least 13 days before the hearing.**

## **Step 5**

### **The Person Who Served the Papers Fills Out the *Affidavit of Service* Form**

If your server personally handed the legal papers to the other party, see "A" below. If your server mailed your legal papers to the other party, see "B" below.

**A. FOLLOW THESE INSTRUCTIONS ONLY IF THE SERVER PERSONALLY HANDED THE PAPERS TO THE OTHER PARTY**

- The person who handed the papers to the other party must fill out the *Affidavit of Personal Service* form included in this packet. This proves to the Court that the other party received a copy of the *Responsive Notice of Motion and Motion* and *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*.
- Print the names of the parties and the case number (the same as on the *Notice of Motion and Motion*).
- Print the date that the papers were personally served (handed to the other party) and the name of the person to whom the papers were given.
- Print the address of the location where the documents were served.
- The person who served the papers must sign the *Affidavit of Personal Service* in front of a notary public or court administrator/deputy. The server must have identification to show to the notary.

**After the *Affidavit of Personal Service* has been signed and notarized, make a copy of it for your records.**

**B. FOLLOW THESE INSTRUCTIONS ONLY IF THE PAPERS WERE MAILED**

**After** the envelope containing the forms has been mailed to the other party, then **the person who placed the envelope in the mail must fill out the *Affidavit of Service by Mail* form included in this packet.** This form proves to the Court that the other party was served with a copy of the *Responsive Notice of Motion and Motion* and *Affidavit in Support of Responsive Motion to Establish Custody and*

*Parenting Time.* The person who mailed the envelope containing the forms must fill in the top part of the form just as was done on all other forms.

1. Fill in the following:
  - the name of the person who mailed the envelope;
  - the date of birth of the person who mailed the envelope;
  - the date on which the person put the envelope in the mail;
  - the address of the other party
  - the city and state where the envelope was put in the mail;
2. **The person who mailed the envelope MUST NOT SIGN the *Affidavit of Service by Mail* until (s)he is in the presence of a notary public or court administrator/deputy. Make sure the person brings picture identification to show to them.**
3. After it has been signed, make one copy of the *Affidavit of Service by Mail* for your records.

## Step 6

### File the Forms with the Court

**AT LEAST FIVE (5) DAYS BEFORE THE HEARING DATE**, hand-deliver the **originals** of the following documents to the court administrator's office. **If your papers raise new issues** not included in the Notice of Motion and Motion, you must file the papers with the court **at least 10 days** before the hearing date. You can mail them to the Court, but you must allow 3 extra days for mailing. Put them in the mail at least eight (8) days before the hearing, (or thirteen (13) days before the hearing if the papers raise new issues).

File:

- The **original** of your *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time*, and all attachments;
- The **original** of your *Affidavit in Response to Motion to Establish Custody and Parenting Time*, and all attachments;
- The **original** of the *Affidavit of Service by Mail*; and
- A filing fee, if applicable.

If you did not pay a filing fee when this case was first begun, you will need to pay the filing fee now. Contact your court administrator's office to find out the cost of the filing fee. Make checks payable to "Court Administrator."

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask the court administrator/deputy for an In Forma Pauperis application. You need to fill out this application and sign it in front of a notary public or court administrator/deputy. This application will be reviewed by the judge who will determine whether you must pay the filing fee. If the judge does not sign the form which waives the fee, you must be prepared to pay the filing fee. The court administrator cannot accept your forms without the filing fee or a waiver signed by a judge.

## Step 7

### Appear in Court

You must go to Court on the date set for the hearing. Be sure to be on time.

**PLEASE BE AWARE** that this is a preliminary hearing only. No testimony will be received by the Court except under unusual circumstances, which will be determined by the Court. The purpose of this **initial hearing** is to determine whether, based on the affidavit submitted by the moving party, there is prima facie evidence that a substantial change in circumstances has occurred such that it would be in the best interests of the child/children to be residing with the other parent. This finding does not change custody, it allows for the scheduling of a hearing.

If the Court finds that prima facie evidence is present, then the matter is scheduled on a separate day for a trial. You would be notified of that separate hearing date and at that date you may bring witnesses to provide testimony.

**Do not bring individuals who you expect to testify to the initial hearing.**

Further, be advised that the Court may order a custody evaluation. A trained individual completes an evaluation of both homes and interviews witnesses and documents. This person then makes a recommendation to the Court as to whether a change of circumstances has occurred such that it would be in the best interests of the child/children to live with the other parent. **Both parties will be expected to pay the cost of such evaluation, which must be paid in full before completion of the evaluation.**

Further, be aware that this matter may be scheduled for a Settlement Conference. The purpose of the Settlement Conference is to facilitate discussions with a judge in settling the case before trial. Each of you will be expected to be present at that Settlement Conference, along with the person who completed the custody evaluation. You will be expected to seriously consider settlement proposals that would be in the best interests of the child/children.

Remember, do not expect an immediate decision regarding whether your child/children will live at a different residence. Before a change can occur, the Court must have a trial at which witnesses will testify and must carefully consider that evidence and issue an Order which will likely come after the hearing. Therefore, it is not unusual that a decision by the Court may not occur until approximately nine months after you have filed the initial papers. However, the Court may consider temporary changes regarding placement of the children and visitation based on the affidavits submitted to the Court at the initial hearing.